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ARBITRATION OPINION AND AWARD

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Arbitration)
)
 Between)
)
 CITY OF WAUWATOSA FIRE DEPARTMENT)
)
 And)
)
 WAUWATOSA FIREMEN'S PROTECTIVE)
 ASSOCIATION, I.A.F.F. LOCAL 1923)
 _____)

Case LXIX
 No. 29511
 MIA-665
 Decision No. 19760-A

Impartial Arbitrator

William W. Petrie
 1214 Kirkwood Drive
 Waterford, WI 53185

Hearing Held

October 8, 1982
 Wauwatosa, Wisconsin

Appearances

For the Employer

QUARLES & BRADY
 By Michael J. Spector
 780 North Water Street
 Milwaukee, WI 53202-3589

For the Association

BRENDEL, FLANAGAN, SENDIK
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 By John K. Brendel
 6324 West North Avenue
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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Wauwatosa Fire Department and the Wauwatosa Firemen's Protective Association, IAFF Local #1923. The parties' prior labor agreement expired at the end of calendar year 1981, and the terms of the renewal agreement are the basis for these proceedings.

After preliminary negotiations between the parties had failed to result in a negotiated settlement, the Association, on March 25, 1982, filed a petition requesting final and binding arbitration pursuant to Section 111.77 of the Wisconsin Statutes. A representative of the Wisconsin Employment Relations Commission met with the parties and they were able to reach a tentative settlement on a one year renewal agreement; the tentative settlement was ratified by the members of the Association, but was rejected by a vote of the Common Council on June 1, 1982. The parties were thereafter unable to reach agreement, and the Commission on July 16, 1982, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration of the matter. On August 20, 1982, the undersigned was appointed by the Commission to hear and decide the matter.

An arbitration hearing took place in Wauwatosa on October 8, 1982, at which time both parties received a full opportunity to present evidence and argument in support of the respective positions. The Association submitted a memorandum brief at the hearing and also submitted a later reply brief, while the City closed with a post-hearing brief followed by additional reply arguments in letter form.

The Statutory Framework for the Proceeding

The dispute is governed by the provisions of Section 111.77 of the Wisconsin Statutes which provide in pertinent part as follows:

"111.77 Settlement of disputes in collective bargaining units composed of law enforcement personnel and fire-fighters....

* * * * *

(4) There shall be 2 alternative forms of arbitration:

(a) Form 1. The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment.

(b) Form 2. The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator at the time that the investigation is closed. Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

- (5) The proceedings shall be pursuant to Form 2 unless the parties shall agree prior to the hearing that Form 1 shall control.
- (6) In reaching a decision the arbitrator shall give weight to the following factors:
 - (a) The lawful authority of the employer.
 - (b) The stipulations of the parties.
 - (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
 - (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (1) In public employment in comparable communities.
 - (2) In private employment in comparable communities.
 - (e) The average consumer prices for goods and services, commonly known as the cost of living.
 - (f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
 - (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 - (h) Such other factors, not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

ISSUES

In light of the fact that there was no agreement of the parties to the contrary, these proceedings are governed by form 2 as described in Section 111.77(4)(b) above. Accordingly, the authority of the Arbitrator is limited to the selection of the final offer of either of the parties, and the issuance of an award incorporating that offer without modification. In determining which of the final offers to select, the Arbitrator is governed by the statutory criteria referenced above.

THE FINAL OFFER OF THE CITY

The final offer of the City consists of the following described proposals:

- (1) A one year labor agreement effective January 1, 1982 through December 31, 1982.

- (2) An 11% general wage increase, effective December 27, 1981.
- (3) Certain changes in Article XIX of the prior agreement, which deals with the subject of promotions.

THE FINAL OFFER OF THE UNION

The final offer of the Association consists of the following described proposals:

- (1) A two year agreement on Article XVI of the agreement, which covers salaries, and status quo on all other fringe benefits and language for 1982.

A 1983 reopener on all articles of the agreement except Article XVI, with negotiations to commence within 30 days of the receipt of the Arbitrator's award in this matter.

- (2) Salary increases for 1982, consisting of a 10.5% across-the-board increase effective January 1, 1982, and an additional 2.5% across-the-board increase effective October 1, 1982.
- (3) Salary increases for 1983 consisting of a 7% across-the-board increase effective January 1, 1983, and an additional 2% across-the-board increase effective July 1, 1983.

POSITION OF THE UNION

In support of its contention that the Association's, rather than the City's final offer is the more appropriate of the two before the Arbitrator, the Association presented a variety of arguments.

- (1) Initially, it cited a number of general factors relating to arbitral consideration of the positions of the parties.
 - (a) It argued that Wauwatosa had experienced, and was experiencing a large growth in population, and in appraised property values.
 - (b) It referenced the fact that the City was the eighth largest in the State in terms of population, and that the actual population did not include an approximate 16,000 daily employees and visitors which utilized the Milwaukee County Institutional grounds.
 - (c) It urged consideration of the fact that the City was second in size only to West Allis, among suburban cities in the Milwaukee Metropolitan area, without consideration of the City's fire-fighting responsibility for the County Institution Grounds.
 - (d) It referenced the size, organization, and responsibility of the Fire Department, arguing that it provided more service to its residents than any other department in the greater Milwaukee metropolitan area.

- (e) It referenced the fact that census data showed that among ten Wisconsin cities with populations of over 50,000, Wauwatosa had the highest median family income, and the highest median value of owner occupied homes.
- (2) It cited and relied upon the parties' recent negotiations history in the Firefighters' unit.
- (a) It referred to Arbitrator Weisberger's 1981 interest arbitration award, which referenced the parties' mutual agreement to the fact that 1980 firefighters' salaries in Wauwatosa had fallen behind, and that they needed some 1981 catch up. It further addressed dicta in the decision, which spoke approvingly of the Association's demand for salary increases totalling 16% in 1981 and 11% in 1982; the Arbitrator ultimately adopted the Employer's one year 11% salary increase based upon other overall considerations.
 - (b) It referenced the tentative agreement of the parties for 1982 salary increases of 10½% effective January 1, with an additional 2½% effective October 1. It cited the fact that the tentative agreement was ratified by the Association but was rejected by the Common Council, thus necessitating return to the arbitration process again in 1983.
 - (c) It emphasized that the Association's final offer for 1982 wage increases, was exactly what had been agreed upon by the parties prior to the rejection by the Common Council; it described its 1983 salary increase proposal as being modest, and designed to avoid the delays in implementation which had consistently resulted from the arbitration process.
- (3) It suggested that consideration of the comparison criterion favored the adoption of the Association's final offer.
- (a) It argued that Wauwatosa firefighters' salaries had, until recent years, been competitive with all of the municipalities in Milwaukee County in general, and with the seven largest communities in particular.
 - (b) It emphasized that firefighter salaries in the bargaining unit had declined from a normal ranking of fourth or fifth among the sixteen municipalities in Milwaukee County to dead last in 1980.
 - (c) It referenced the fact that the firefighters unit would remain last among the seven largest municipalities, even with the adoption of the Association's final wage offer for 1982; it particularly emphasized the disparity between Wauwatosa and West Allis firefighters, arguing that these were the most comparable cities in terms of size, population, services performed, and workplace dangers and conditions.

- (d) It argued that those in the unit did not receive competitive fringe benefits with the other six largest communities in Milwaukee County, in the areas of total days off for vacations, holidays, work reduction and personal days. It also cited annual rates of sick leave accumulation, maximum sick leave accumulation, days paid at retirement, and duty injury pay comparisons, arguing that the City was not competitive in any of these areas.
- (e) It submitted that the Association's proposed 1983 salary increase was needed to be competitive with the 1983 increases scheduled for the sister city of West Allis.
- (4) It cited movement in the consumer price index from 1977 through 1981, alleging that those in the bargaining unit had suffered considerable erosion in salaries due to failure to keep pace with past cost of living increases.
- (5) It alleged significant increases in workload since the extension of firefighter service by the City to the Milwaukee County Institutional Grounds.
- (6) It submitted that the City had failed to justify its proposed changes in promotion practices, and referenced the following principal arguments.
 - (a) That the present contract language has served the parties well in providing high quality candidates for promotion, and that no known problems have appeared which would justify the proposed changes.
 - (b) That prior to the final offers, it had been tacitly understood that any promotional language changes had been dropped from consideration.
 - (c) That the proposed promotion modifications would eliminate the requirements that the written examination be passed with at least a score of 75%, would reduce the established seniority credit, and would eliminate credit for fractional years. That the proposed changes are ill-conceived and, for various reasons, would pose serious problems. That current eligibility lists would be affected, as would promotions which have already taken place since the beginning of 1982.
- (7) That the Union's proposed two year term is more appropriate than the City proposal for a one year agreement.
 - (a) That the negotiations history of the parties shows that they have always opted for two year agreements; that the sole exception was the 1981 arbitration award for one year.
 - (b) That one year agreements may result in inequities to employees, due to the need for additional extended negotiations/arbitration.

- (c) That the Wauwatosa Police Department and the City workers are currently operating under two year agreements.
- (d) That while multi-year contracts frequently provide for salary reopeners, the peculiar circumstances surrounding Wauwatosa firefighter past negotiations justifies an unusual type of 1983 reopener.
- (e) That Wisconsin cities' unhappiness with the statutory interest arbitration process has caused delay in the implementation of settlements, with attendant frustration and loss of purchasing power for those in the bargaining units; that cities benefit financially from long delays in the settlement of labor negotiations.
- (f) That the 1981 award of Arbitrator Weisberger referenced approval of the pattern of two year awards, and also addressed the need for catch up in future negotiations. That the Association's two year offer meets the needs recognized and referenced in the earlier arbitration proceeding.

In its reply brief, the Association reiterated and/or expanded upon various of the points made at the hearing or in its original memorandum brief. It particularly emphasized the following particulars.

- (1) That those in the bargaining unit had received the lowest 1981 salary increase of any department in the City of Wauwatosa, despite the recent increases in firefighter workload.
- (2) That the parties have typically utilized two year labor agreements in the past, that the prior arbitrator favored such a two year term, and that the second year salary proposal is the only manner in which the Firefighters can avoid another extended delay in the implementation of 1983 salary increases.
- (3) That the City's argument that it would be disadvantaged by the unusual second year proposal is unpersuasive, due to the fact that it was necessitated by the City Council rejection of the agreed upon 1982 settlement.
- (4) That the second year increase is reasonably necessary for catch up purposes and, in any event, that the Union's proposal is also reasonable in light of other recent settlements.
- (5) That the City's suggested use of comparisons outside of the Milwaukee metropolitan area is without merit; that comparisons with the seven major departments within the Milwaukee metropolitan area are the most persuasive and relevant.
- (6) That if arbitration is again needed for the remaining non-wage aspects of the 1983 agreement, the size of the deferred wage increase would be considered by an arbitrator.

- (7) That adoption of the final offer of the Association is necessitated by the City's lack of effort to improve fringe benefits and wages, as were observed to be necessary and recommended in the decision of Arbitrator Weisberger.

POSITION OF THE EMPLOYER

In support of its contention that the Employer's final offer is the more appropriate of the two before the Arbitrator, the City emphasized a variety of arguments.

- (1) In general, it submitted that neither the lawful authority of the employer, the stipulations of the parties, nor the interests and welfare/ability to pay criteria had been emphasized in these proceedings; it urged that consideration of the remaining arbitral criteria of Section 111.77 favored the position of the Employer.
- (2) It submitted that wage comparisons with comparable communities favored the selection of the final offer of the Employer; in this connection, it urged consideration of Wauwatosa versus all other communities in the Milwaukee Metropolitan Area which maintain 24 hour per day, 7 days per week paid firefighter service, and/or consideration of Wauwatosa versus the eight communities immediately larger and the eight communities immediately smaller within the State of Wisconsin.
- (a) It submitted that Wauwatosa would move from tenth of twelve to ninth of twelve in wages, in the comparable metropolitan area communities, with the adoption of the Employer's final wage offer. It also argued that the Employer's percentage and wage increase offers would rank sixth highest of the twelve comparable communities. Alternatively, it submitted that the Union's proposed 13% lift for 1982 would rank above all but one of the comparables.
- (b) In looking to comparisons with the eight larger and eight smaller Wisconsin communities, it argued that adoption of the City's offer would move the firefighters from fifth in 1981 to fourth in 1982. The City's 1982 dollar increase would be the third highest and its percentage increase the fourth highest among the seventeen communities. Alternatively, it argued that the Union's 13% lift would be higher than any of the seventeen largest communities in the State of Wisconsin.
- (c) It submitted that the seven cities urged for comparison by the Association were primarily composed of cities in the second or third year of multi-year contracts in 1982, and that these contracts were negotiated at a time when anticipated increases in cost of living were much higher.

Within the comparison group urged by the Union, it cited the City's 11% offer as comparing favorably with Greenfield's October 1982 settlement of 9.1%;

it also argued that the Employer's offer would bring those in the bargaining unit closer to West Allis firefighter salaries, and would entail a higher dollar increase and a higher percentage increase for 1982 than received by West Allis firefighters. Alternatively, it pointed out that adoption of the Union's offer would result in a 1982 salary lift of almost 4% more than that received by West Allis Firefighters.

- (3) It submitted that the adoption of the Employer's final offer would be more consistent with other 1982 wage settlements by the City within other bargaining units; in this connection, it cited the post-1975 bargaining history, which shows that settlements within the City have rarely differed more than one-half percent. In support of its eleven percent wage offer for 1982, it cited eleven percent wage settlements within the Department of Public Works, the Police Department and the Alarm and Switchboard Operators bargaining units.
- (4) It argued that the Employer's wage offer was more than adequate in light of the 1982 rate of increase in the Consumer Price Index; further, it submitted that the offer was also in excess of the increases in both the National and Milwaukee indexes for the January 1981 through December 1981 time frame.

Despite the significant recent decline in the rate of increase in the Consumer Price Index, it submitted that the Union proposed increase of thirteen percent was higher than the eleven percent increase for 1982, which was included in the Union's final offer in the parties' 1981 interest arbitration proceeding.

- (5) It urged that the Union had failed to justify its demand for additional 1983 wage increases totaling nine percent, and a reopener on all other contract provisions. In this connection it cited the following arguments.
 - (a) That no reasonable basis for the second year wage increase was presented by the Union.
 - (b) That the Union cited no comparable 1983 settlements in other cities, in the nine percent range, and that the City is unaware of any such agreements.
 - (c) That no other Wauwatosa settlements have been reached, which would provide such 1983 wage increases, and that none was anticipated.
 - (d) That the proposed increase of 9% for 1983, when coupled with a 13% proposed increase for 1982, was excessive; that it exceeded cost of living requirements, and it was not supported by comparables.
- (6) That the two year term of the Union's proposal, with reopeners for all but wages, should itself be rejected on various grounds.
 - (a) That it would be unprecedented among any group of comparable communities.

- (b) That it would be contrary to the interests and welfare of the City, in that it would preclude negotiations on an entire contract for 1983.
 - (c) That it would be contrary to long-standing precepts of American collective bargaining.
 - (d) That adoption of a 9% 1983 wage increase for the Firefighters would interfere with bargaining within other bargaining units in the City for 1983, by providing an artificial benchmark increase.
 - (e) That it would be unreasonable to require bargaining on all mandatory items of bargaining other than wages for 1983, after wages had already been established; that a strong incentive for the Union to go to arbitration again, would result from the fact that its wage increase was already assured.
- (7) That the City's proposed changes in promotional policy were very reasonable, and were justified by several considerations.
- (a) That the changes were not intended to apply retroactively to any 1982 promotions.
 - (b) That the proposal was designed to meet certain Union desires in the promotion area; indeed, it was included in the Employer's final offer only because it was presumed to be acceptable to the Union.
 - (c) That the Chief testified clearly that he would agree to return to the old policy in 1983, if that was desired by the Union.
 - (d) That the proposed changes are fair and reasonable, but that the policy is subject to renegotiation for 1983, prior to affecting any candidates for promotion who took the tests during 1982.

In summary, that the Union's final offer is not supported by comparables, exceeds any increases in cost of living, and promises to raise havoc in 1983 bargaining, due to the unusual second year proposal; further that the Union cannot justify its final offer except through the use of arguments based upon factually unsupported assumptions.

In its letter response to the Association's Reply Brief, the City particularly emphasized the following points.

- (1) That the prior arbitration award did not persuasively favor the adoption of the Union's offer in these proceedings; that dicta cited by the Association from the earlier award was conditioned upon certain assumptions with respect to the additional workload. That the City had added 12 new firefighters as a result of the county grounds takeover, and that the increased workload does not persuasively support the position of the Association.

- (2) That Wauwatosa Firefighters are not last in wages in the Milwaukee Metropolitan Area; to the contrary, considering the twelve communities with 1982 settlements, they were tenth in 1981 and would move to ninth in 1982, with the adoption of the City's final offer.
- (3) That considering the arguments of the parties and the matters of record in these proceedings, the Arbitrator should adopt the final offer of the City.

FINDINGS AND CONCLUSIONS

The legislature has charged the Arbitrator with the responsibility of considering each of the statutory criteria spelled out in Section 111.77(6) of the statutes. Neither of the parties has significantly addressed either the lawful authority of the employer or the ability to pay/interests and welfare of the public criteria. The parties agreed to certain stipulations, however, and either or both referenced evidence and arguments relating to the comparison factor, to the overall level of compensation, to cost of living factors, and/or to negotiations history considerations.

The Comparison Criteria

Both parties cited comparative salaries paid to firefighters by various other public sector employers, and both cited certain internal comparisons with other City of Wauwatosa employees.

Interest arbitrators normally find the comparison criterion to be the most significant single factor in wage determination, and they are particularly persuaded by the intraindustry wage history of the affected employees. The basis for the importance placed upon these factors is rather well described in the following excerpts from the book by Irving Bernstein: 1./

"Comparisons are preeminent in wage determination because all parties derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood....The Employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market.....Arbitrators benefit no less from comparisons. They have 'the appearance of precedent and...awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.' "

* * * * *

"a. Intraindustry comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determination standards."

* * * * *

"The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intra-industry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison there is virtually nothing to dissuade him from doing so again. By the same token, if they have not had a wage relationship over time, he is likely to refuse to create one."

Although the above references clearly describe and indicate the importance and the persuasive value of the intraindustry comparison, it must be recognized that the parties have urged two separate comparisons. Both parties cited comparison data from Milwaukee metropolitan area municipalities, while the City also introduced comparison data between the seventeen largest municipalities in the State of Wisconsin.

The record is quite clear that the parties have historically compared Wauwatosa firefighters with other municipalities in the Milwaukee metropolitan area, and this was also evident in their presentations in the 1981 interest arbitration which is discussed below. When this bargaining history is considered in conjunction with the obvious common identity of interest, and the common geographic proximity of the communities to Milwaukee, it is apparent that these comparisons are the most significant and persuasive. While the statewide comparisons emphasized by the Employer are worthy of some attention and consideration in these proceedings, they are clearly not as important as the historical Milwaukee metropolitan area comparisons; it should be noted that the statewide comparisons were not comprehensive with respect to any wages and benefits history.

Having determined that the Milwaukee metropolitan area comparisons are the most persuasive, the Arbitrator has found the following evidence to be particularly persuasive.

- (1) Union Exhibit #8 shows salary comparisons for 1980 among the sixteen Milwaukee County communities, and Wauwatosa is shown to be last in firefighter salaries.
- (2) Union Exhibits #9 and #12 show salary comparisons for the seven largest communities in the metropolitan area. Wauwatosa is last among these communities and would remain last for 1982, regardless of which final offer is selected by the Arbitrator. The approximate yearly salary for firefighters for 1982 would be \$23,101.67 under the Union's offer, and \$22,779.52 under the Employer's offer; Wauwatosa firefighters would remain approximately 3% below the average 1982 salary of approximately \$23, 826.20 if the Association's offer is adopted, and would remain approximately 4.5% below average, with the adoption of the Employer's final offer.
- (3) Employer Exhibit #6 shows that the City is reasonably competitive in the size of the 1981 wage increase, and

it also shows that the 13% overall 1982 salary lift provided in the Association's final offer would be somewhat above average. When analyzed in connection with Employer Exhibit #7, however, it also shows a relative erosion of unit firefighter salaries between 1979 and 1982, particularly when compared to the largest of the metropolitan area communities. In looking to all the communities listed on Employer Exhibit #6 which show complete figures for 1979-1982, the total raise provided by the Employer's offer would exceed only Waukesha, for the period shown.

- (4) Employer Exhibit #9 shows that the Employer's final offer would be reasonably competitive when compared to the 1982 dollar and percentage increases for the sixteen largest municipalities in the State. As referenced above, however, there is no evidence that these figures have been utilized by the parties in the past, and there is no indication of the recent salary history within the communities shown, other than those cities within the Milwaukee Metropolitan Area.

At this point, it should be noted that the City of West Allis is close in terms of size and proximity, and it was characterized as perhaps the most comparable city to Wauwatosa in the parties' 1981 arbitration. While comparison with the various Milwaukee metropolitan area cities of comparable size is more persuasive than comparison with any single city, it should be noted that specific firefighter wage comparisons with West Allis would support the adoption of the final wage offer of the Association.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the intraindustry wage history of the Wauwatosa Firefighters and those employed by other Milwaukee Metropolitan Area cities, is the most persuasive comparison data. An examination of this data shows a recent erosion of Wauwatosa firefighter salaries, and rather clearly supports the selection of the Association's 1982 salary proposal rather than that of the City.

The second year salary proposal of the Union, would entail two increases providing an additional 9% lift for 1983. While there was little 1983 salary comparison data available at the time of the hearing, implementation of the Union's offer would place the unit firefighters 1983 salaries somewhat above the 1982 average salary for the six largest cities in the Milwaukee Metropolitan area; those in the bargaining unit would begin 1983 approximately 3.7% above the average 1982 salary, and would end the year approximately 5.8% above the 1982 average salary.

The Negotiations History Criterion

Negotiations history considerations overlap with comparisons, and fall well within the general coverage of Section 111.77(6)(h) of the Statutes; this factor was addressed by both parties.

The Employer stressed the recent history of bargaining within the City, submitting that the recent wage settlements within the firefighter unit have been comparable with the wage settlements reached with other City of Wauwatosa employees.

The Association cited the 1981 interest arbitration award of Arbitrator Weisberger, which addressed wages and benefits erosion, and which recognized the apparent need for catch up in firefighter wages, and in certain fringe benefits. In addressing these considerations, the arbitrator indicated in part as follows:^{2./}

"According to both parties, Wauwatosa firefighters' salaries as of 1980 are behind where they should be and need some 'catch up' in 1981. While the City correctly argues that it is unrealistic to expect to catch up in one year since the backwards salary slide for City firefighters took place over 5 or 6 years, yet it is difficult to discern any significant catch up in the City's 1981 salary offer.....Accordingly, if salary were the only issue in dispute, despite the deficiencies and concerns noted above relating to the Association's salary offer, the undersigned believes that the Association's final offer on this issue more closely approximates the statutory criteria set forth in Section 111.77(6) than does the salary offer of the City."

* * * * *

"...The cumulative costs of the Association's two year package are exceedingly high, either in terms of undermanning or salary costs to assure adequate staffing. Since the arbitration process is not designed to correct all inequities in one proceeding, the arbitrator has determined with great reluctance to select the final offer of the City despite its shortcomings in the salary area and in its failure to include any improvements in the areas of holidays, vacations, and sick leave.

Since the City's final offer is for one year only and since negotiations must soon begin for a successor agreement, the arbitrator hopes that the parties will engage in meaningful bargaining to remedy the salary and fringe benefit deficiencies she has noted above. The need for significant catch up and for appropriate recognition of the increased work load of City firefighters remains to be resolved in future agreements."

The Association also particularly emphasized the negotiations history leading to the current interest arbitration proceedings, emphasizing the fact that its final offer was identical to the negotiated agreement between the parties which was later rejected by the City Council. It defended its proposed second year increase on the basis of the continuing need for catch up.

The Impartial Arbitrator has concluded that the above referenced negotiations history, strongly favors the position of the Association in these proceedings. Despite the 1981 findings and recommendations of Arbitrator Weisberger relative to the need for catch up, the final offer of the City proposes no changes in fringe benefits, and offers a 1982 wage increase which is two percent lower than previously agreed upon by the parties in mid-1982! Despite the difficult times facing Wisconsin communities in 1983, the negotiations history considerations favor the Association's rather substantial 1982 and 1983 wage increase proposals.

The Cost of Living Criterion

Both parties addressed movement in the consumer price index

versus recent salary increases within the bargaining unit, in support of their respective final offers. The Association alleged an approximate fourteen to nineteen percent erosion of purchasing power between 1977 and 1981, due to failure of salaries to keep pace with cost of living increases. The City emphasized the size of the 1981 and the proposed 1982 wage increases, suggesting that they were more than sufficient to keep pace with recent movements in the consumer price index.

Normally, Arbitrators will not consider movements in consumer prices occurring prior to the last time that the parties went to the bargaining table. This is because the most recent settlement of the parties is presumed to have resolved all outstanding wage matters, and to go beyond the last contract would be to reopen matters previously settled. On this basis, the Arbitrator has determined that the final offer of either of the parties would be sufficient to keep pace with recent and presently anticipated movement in the consumer price index. Except to the extent that they are part of the wage history as discussed above, settlements prior to 1981 are immaterial with respect to cost of living considerations, and this criterion cannot be assigned definitive importance in this matter.

The Overall Level of Compensation Criterion

The overall level of compensation, including an examination of certain fringe benefits was a significant element in the parties' prior arbitration. The argument was advanced that certain of the benefits of those in the bargaining unit continued to be sub-standard, and some supporting evidence was introduced into the record by the Association.

The Arbitrator will merely observe that no proposed changes in fringe benefits were included in the final offers of either party, and the overall level of present compensation cannot be assigned definitive weight in these proceedings.

Miscellaneous Additional Considerations

While both parties addressed the matter of the current level of firefighter service to the City, and both addressed the matter of recent changes in firefighter workload, the Arbitrator has not treated these matters in depth. The evidence is simply not conclusive with respect to the arguments of either party, and the matter was not a determining factor in the outcome of these proceedings.

Arbitrators will normally require rather persuasive reasons for the elimination of past programs or practices, or for the substantial modification of provisions of prior agreements. The Employer's proposed change in promotion policy was somewhat unusual in that it was unanticipated by the Association, and no persuasive case was established for how it would improve the prior policy, or how it would realistically benefit either party. Even with the Employer's assurances relative to its intention not to apply the changes retroactively, and its expressed willingness to return to the old practice upon request, it would be quite difficult to justify arbitral adoption of such a change.

What then of the highly unusual nature of the Association's proposed 1983 reopener? While the proposal would eliminate the Association's continuing problems with respect to wage increases

being implemented well after-the-fact, no persuasive case has been made for the adoption of such an unusual provision. If the Arbitrator had the authority to do so, he would be most reluctant to award such a reopener as a part of any final offer, however appropriate the offer might be in other respects!

Summary of Preliminary Conclusions

As addressed in greater detail above, the Arbitrator has reached the following summarized preliminary conclusions:

- (1) The 1982 wage proposal of the Association is clearly favored by comparison data relating to the intraindustry wage history of Wauwatosa firefighters and those firefighters employed by other Milwaukee Metropolitan Area cities.
- (2) Consideration of the negotiations history of the parties clearly favors the 1982 and 1983 wage increase proposals of the Association.
- (3) Cost of living considerations, taken alone, do not definitively favor the final offer of either party.
- (4) The overall level of compensation presently received by those in the bargaining unit, does not definitively favor the final offer of either party.
- (5) No persuasive basis has been established for the proposed change in promotion policy as contained in the Employer's final offer.
- (6) No persuasive basis has been established for the proposed 1983 reopener, as contained in the Association's final offer.

Selection of the Final Offer

After a careful consideration of all the statutory criteria and the entire record before me, it is apparent to the Impartial Arbitrator that the final offer of the Association is the more appropriate of the two offers. The Association's 1982 and 1983 wage proposals are clearly more appropriate than the Employer's one year wage proposal and, while a persuasive case has not been made for the proposed 1983 reopener, the Arbitrator is limited to the selection of the final offer of either of the parties, without modification.

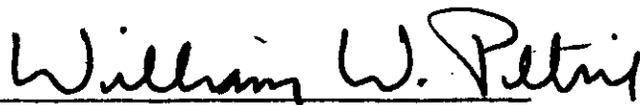
1./ The Arbitration of Wages, University of California Press, 1954, pages 54, 56, 66. (footnotes omitted)

2./ Wauwatosa Firemen's Protective Association and City of Wauwatosa, Case LIX No. 27036, Decision No. 18414, MIA-518, August 21, 1981, pages 6-7.

AWARD

Based upon a careful consideration of all the evidence and argument, and all of the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

- (1) The final offer of the Wauwatosa Firemen's Protective Association is the more appropriate of the two final offers before the Arbitrator.
- (2) Accordingly, the Association's final offer, hereby incorporated by reference into this award, is ordered implemented by the parties.



WILLIAM W. PETRIE
Impartial Arbitrator

March 9, 1983